

01
02
03 UNITED STATES DISTRICT COURT
04 WESTERN DISTRICT OF WASHINGTON
05 AT SEATTLE

06 JAMES E. PIMPTION,) CASE NO. C06-0629-RSM
07)
08 Plaintiff,)
09)
10)
11 v.) REPORT AND RECOMMENDATION
12)
13 KAREN NYGAARD,)
14)
15 Defendant.)
16)

17 On May 5, 2006, plaintiff submitted a complaint pursuant to 42 U.S.C. § 1983, alleging
18 that he was denied adequate dental and medical attention during his confinement at the Snohomish
19 County Jail (“Jail”) in Everett, Washington. Because plaintiff’s original complaint listed John and
20 Jane Doe as the sole defendants, the court declined to direct service of the complaint and instead
21 granted plaintiff leave to amend his complaint. (Dkt. #8). Plaintiff filed an amended complaint
22 naming several defendants, including Karen Nygaard, and the court directed service of the
23 complaint on June 30, 2006. (Dkt. #10). In so doing, the court dismissed all defendants except
24 for Karen Nygaard because plaintiff’s complaint failed to state a cause of action against the
25 dismissed defendants. (*Id.*) Defendant Nygaard has now filed a motion for summary judgment.
26 (Dkt. #21).

27 In her motion for summary judgment, defendant argues that she cannot be liable under 42
28 U.S. § 1983 because she did not work at the Jail at the time of the events giving rise to this

01 lawsuit. In the declaration that she attaches to her motion, defendant states that she lived in
02 Wisconsin during the time that plaintiff alleges he received inadequate medical attention. (Dkt.
03 #22, Ex. 16 at 2). Accordingly, defendant contends that she did not personally participate in any
04 alleged violation of plaintiff's civil rights. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir.
05 1981).

06 Plaintiff did not file a response to defendant's motion for summary judgment, despite
07 having been warned pursuant to *Rand v. Rowland*, 113 F.3d 1520, 1524 (9th Cir. 1997) that
08 failure to do so could result in dismissal of this lawsuit. (Dkt. #10 at 5). Consequently, plaintiff
09 does not present any argument or evidence opposing the motion. Because defendant's argument
10 is supported by her own declaration, which stands unchallenged by plaintiff, there is no genuine
11 issue of fact as to defendant Nygaard's lack of personal participation in the events underlying this
12 action and she is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56(c); Anderson v.*
13 *Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Therefore, the court recommends that defendant's
14 motion for summary judgment be granted and this matter dismissed without prejudice.¹ A
15 proposed Order reflecting this recommendation is attached.

16 DATED this 5th day of December, 2006.

17 
18 Mary Alice Theiler
United States Magistrate Judge

19 _____
20 ¹ The court notes that even if plaintiff had named a defendant who personally participated
21 in the events described in his complaint, it is debatable whether he alleges facts that state a claim
22 under § 1983. "While poor medical treatment will at a certain point rise to the level of
Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).
22